

The "Additional Insured"

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A nonprofit's commercial general liability policy (CGL policy) goes to great length to specify whom (organizations or individuals) that policy protects. To grasp this, take a look at the Declarations page (dec page) and the section titled "Who Is an Insured" in your nonprofit's current CGL policy.

Some Confusing Language

The Insurance Services Office's (ISO) CGL policy wording explains that "You" means the "Named Insured" shown on the Declarations page and any other person or organization qualifying as a Named Insured under the policy. An Insured, in contrast, means any person or organization qualifying as an Insured under "Who Is an Insured." For example, executive officers, directors, employees, or volunteers of the Named Insured are Insureds while acting within the proper scope of their official duties or powers with the organization.

ISO's CGL policy distinguishes between a Named Insured (or You) and an Insured, as respects the protection the policy provides. Often the exclusions are broader — and, consequently, the liability coverage narrower — for an Insured than for a Named Insured. Every Named Insured is an Insured; however, not every Insured is a Named Insured.

For example, a policy may contain an exclusion that applies only to employees but not the corporate entity (the nonprofit). Keep in mind that it is more advantageous to be a Named Insured than just an Insured.

And then there is an "Additional Insured." Additional Insured status is always added by endorsement, which amends the Who Is an Insured section to add another person or organization as an Insured. Therefore, an Additional Insured will only have the extent of coverage offered to other Insureds or as defined by the endorsement. It may seem complex, but it really is not. An endorsement must be requested by the agent or broker, and issued by the insurance company to add the person or organization to the policy as an Additional Insured.

Additional Insured coverage can be very limited. The Named Insured is more fully protected than Insureds, and Additional Insureds may enjoy even less coverage than the Insureds. However, you cannot determine the extent of coverage without reading the language in both the Additional Insured Endorsement and the policy itself.

The request for Additional Insured status should result in the issuance of an endorsement and a "Certificate of Insurance" indicating that the coverage has been provided. A Certificate of Insurance without an Additional Insured Endorsement *does not provide additional insured status* to the requestor — the policy must be endorsed or contain a blanket additional insured endorsement. When requesting additional insured status always ask for a copy of the additional insured endorsement.

The explosive growth in the requests for Additional Insured status can in some ways be attributed to the nature of our litigious society. When someone seeks compensation for harm, it is common to look widely for a source of financial recovery. The range of people or organizations who may be sued, and the amounts for which they may be sued, are theoretically unlimited. Therefore, those who feel threatened by potential lawsuits have been seeking liability coverage wherever possible. Additional Insured status under another organization's liability insurance becomes an inviting, but often confusing, option.

A Resulting Problem

In negotiating a business contract with another person or organization, one entity often seeks to become an Additional Insured under the policies of the other party. For example, if your nonprofit is contracting with a company to sponsor an event, any sponsor may require that it become an Additional Insured under your CGL policy. Otherwise, the sponsor may refuse to deal with you. Conversely, if an organization that serves one of your nonprofit's core constituencies wishes to obtain from you something that your nonprofit is uniquely able to provide — perhaps the use of your trademark or your sponsorship of an activity — you may seek to become an Additional Insured under that organization's CGL policy with respect to any aspect of that trademark use or activity.

Setting the Record Straight

The church's insurance does no good for the nonprofit because the nonprofit isn't a Named Insured, Insured or Additional Insured under the church's policy. Adding the nonprofit as an Additional Insured to the policy isn't a viable solution because the nonprofit has operations totally independent of the church. Assuming that an insurance company was willing to add the nonprofit as Additional Insured, coverage would only apply *as respects the nonprofit's activities arising from the Named Insured's operations*. The church should request the nonprofit to add the church as an additional insured to its policy.

Is This Nonprofit Covered?

A small nonprofit leases one location for its operations and also uses donated space at a nearby church. The executive director believes that his nonprofit does not need general liability coverage for the nonprofit's church location because "the church already has insurance."

In the end, the executive director of the nonprofit is persuaded to obtain a policy that provides commercial general liability coverage for both of his locations, the building he leases and the space donated by the church.

As this example shows, your organization can be both a "provider" of additional insurance protection (such as to the sponsor) and a "user" of additional insured protection (such as from the organization that wants your public endorsement).

Many nonprofit leaders mistakenly believe that they can obtain appropriate liability insurance at no cost (free!) by becoming an Additional Insured under the liability policies of other organizations with which they contract. This is rarely true. As discussed, Additional Insured status *does not extend the same coverage and protection* afforded to the Named Insured. The nature of the coverage as an Additional Insured depends upon the endorsement used to provide the coverage.

Most Additional Insured endorsements limit coverage for the other entity (Additional Insured) with respect to their liability for your activities or activities they perform on your behalf. For example, ISO Form "Additional Insured — Manager or Lessors of Premises" (CG 20 11 01 96) adds the lessor or manager as an insured "but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you." It is inappropriate to believe that additional insured status is as effective as the insurance that the organization purchases directly.

Elements of a Solution

The four key parts of solving this problem — making sure your nonprofit has appropriate insurance, or receives suitable insurance from business partners, whenever it enters into any joint effort with another organization — are:

1. Don't assume that the other organization has appropriate insurance; require the other business to have the appropriate liability coverage and obtain a certificate of insurance to verify their insurance coverage.
2. Request a copy of the additional insured endorsement and review it with your insurance professional. Remember that your coverage as an Additional Insured is limited to your activities or operations that are related to the Named Insured's operations;
3. Read very carefully both your policies and the Additional Insured Endorsements of others' policies.
4. Seek guidance and clarification from your insurance agent, broker, or insurance consultant.

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